

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

DONALD A. CLIFT,

Appellant,

v.

OLYMPIC AIR POLLUTION CONTROL
AUTHORITY,

Respondent.

PCHB No. 90-14

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

In this appeal Donald A. Clift contests Olympic Air Pollution Control Authority's ("CAPCA") issuance of a \$50 penalty with \$25 suspended for an alleged first violation of Regulation I, at Art. 13, Section 13.05(a)(1), and WAC 173-433-150(1)(a), for using a solid fuel burning device (woodstove) at 9:57 a.m., December 17, 1989, during a declared air pollution episode burn ban.

The Pollution Control Hearings Board held a formal hearing on February 15, 1990, at 10:00 a.m. at the Board's office in Lacey, Washington. Board members present were: Harold S. Zimmerman, Presiding, and Judith A. Bendor, Chair.

1 Appellant Donald A. Clift appeared and represented himself.
2 Attorney Fred D. Gentry of Bean, Gentry and Rathbone, represented the
3 Olympic Air Pollution Control Authority. Proceedings were tape
4 recorded. Witnesses were sworn and testified. Exhibits were examined
5 and admitted. Argument was made.

6 From the foregoing, the Board makes these:

7 FINDINGS OF FACT

8 I

9 Appellant Donald A. Clift resides at 9525 62nd Avenue SE, Olympia
10 where he has an electric heating system, and a wood stove (which is a
11 solid fuel burning device).

12 II

13 To forestall a serious air pollution situation, the Department of
14 Ecology declared an air pollution episode, banning the use of solid
15 fuel burning devices. This ban was in effect from December 11, 1989
16 to 10:00 a.m. on December 17, 1989.

17 III

18 Mr. Clift was working in his garage and listening to radio
19 station KPLU, when he heard the announcement that the burning ban
20 would be lifted at 10:00 a.m., Sunday, December 17, 1989.

21 IV

22 Mr. Clift went into his house and tried unsuccessfully for 45
23 minutes to reach OAPCA by telephone to verify that the ban was being
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1 lifted, but the toll-free number was busy. He chopped some kindling
2 and prepared paper, kindling and wood, and lighted a fire in the
3 stove, assuming it was 10:00 a.m. Mr. Clift admits that in his
4 exuberance he probably lighted the fire before 10:00 a.m.

5 V

6 OAPCA is a municipal corporation with authority to conduct a
7 program of air pollution prevention and control in a six-county area
8 of the Olympic peninsula, including Thurston County. The Pollution
9 Control Hearings Board recognizes and takes notice of OAPCA's
10 Regulation 1, and WAC 173-433-150(1)(a) dealing with air pollution
11 episodes.

12 VI

13 On December 17, 1989, Robert Moody, wood stove inspector employed
14 by OAPCA since October 1989, was on his way back to the OAPCA office
15 when he saw smoke coming from the chimney of the residence at 9525
16 62nd Avenue SE, Olympia.

17 He took two photographs of the house and chimney. Mr. Moody
18 looked at his watch which read 9:57 a.m. He keeps his watch set two
19 minutes fast, so the actual time was 9:55 a.m. The chimney was
20 smoking profusely, like a freshly-lighted fire.

21 VII

22 OAPCA's Daily Curtailment Log Sheet showed that the burning ban
23 ended at 10:00 a.m. that day. Inspector Moody did not learn that the
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1 burn ban had been lifted until he returned to the OAPCA office at
2 approximately 11:00 a.m.

3 VIII

4 On December 22, 1989, Mr. and Mrs. Clift received by mail from
5 OAPCA a Notice of Violation for the wood stove use during the burn
6 ban. Because this was a first violation, a \$50 penalty was assessed,
7 with \$25 suspended.

8 IX

9 Appellant Clift's position is that the burn ban is valid, and he
10 intendeds to comply, but the violation was so minor that the penalty
11 should be suspended.

12 X

13 Any Conclusion of Law which is deemed a Finding of Fact is hereby
14 adopted as such.

15 From these Findings of Fact, the Board enters the following

16 CONCLUSIONS OF LAW

17 I

18 The violation in this instant case is the "causing or allowing
19 the emission of an air contaminant, smoke, from a solid fuel burning
20 device during a declared air pollution curtailment." Regulation 1 at
21 Art. 13, Section 13.05(a)(1), and WAC 173-433-150(1)(a)

22 II

23 Appellant admitted that he violated the burning ban, and we agree.
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III

The appropriateness of the amount of a civil penalty is a matter involving consideration of factors bearing on reasonableness. In this case, appellant Clift has convinced the Board that he had no intention of violating the ban, nor would he violate it in the future. He made a conscientious effort to comply. We view this five-minute violation as minor. The penalty should be suspended.

IV

Any Finding of Fact which is deemed to be a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law the Board enters this

ORDER

Notice and Order of Civil Penalty No. 0213 RM is AFFIRMED, but the penalty is suspended, provided that there no air pollution violations within one year.

DONE this 6th day of March, 1990.

POLLUTION CONTROL HEARINGS BOARD

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Presiding

Judith A. Benlor
JUDITH A. BENLOR, Chair

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